



State of Washington
PUBLIC DISCLOSURE COMMISSION

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M E M O R A N D U M

TO: Commissioners

FROM: Philip E. Stutzman, Director of Compliance

DATE: June 2, 2005

SUBJECT: Summary of American Cancer Society Enforcement
Staff Recommendations Regarding Dismissal of Remaining Allegations in
PDC Case #04-446, Washington BREATHE Alliance, et.al

PDC staff has completed its investigation into: 1) allegations of unreported direct and grass roots lobbying activity by the member organizations of what was known as the Washington BREATHE Alliance and by the individual registered lobbyists of these organizations; and 2) allegations of unreported political contributions from Breathe Easy Washington, the political committee supporting Initiative 890, to the Washington BREATHE Alliance. (PDC Case No. 04-446)

Staff found that the Washington BREATHE Alliance was a loose knit umbrella group of five like minded health organizations who shared a common interest of eliminating second-hand smoke in all indoor public places. It was a separate entity in name only. The five organizations included the American Cancer Society, the American Heart Association, the American Lung Association of Washington, the Washington Pacific Islander Families Against Substance Abuse, and the Center for MultiCultural Health. The organizations making up the Alliance sponsored separate lobbying activities without direction from the Washington BREATHE Alliance or from any single member of the group.

The enforcement action being presented to the Commission on June 9, 2005 is for the late reporting of the **American Cancer Society**, Northwest States, Great West Division. In addition to the Report of Investigation, Addendum, and Summary of Case No. 04-446, Staff has forwarded a Notice of Administrative Charges and Stipulation of Facts, Violations and Penalty for the American Cancer Society for Commission consideration.

The Charges and Stipulation detail late reporting of grass roots lobbying activities and contributions to a statewide initiative campaign.

Late Reporting During Course of Investigation – During the course of the investigation, late reporting in 2005 by the American Cancer Society occurred for several contributions made to Healthy Indoor Air for All Washington, the political committee supporting Initiative 901, a statewide initiative committee that is currently gathering signatures in an effort to qualify I-901 for the November 8, 2005 ballot. This late reporting has been included in the Stipulation and reflected in the penalty. This late reporting implicates RCW 42.17.180, which requires the employer of a lobbyist to report on a monthly basis contributions over \$100 made to a political committee.

Stipulation of Facts, Violations and Penalty – The Stipulation includes a penalty of \$7,500 with \$4,000 suspended based on compliance with certain conditions. There are no comparable cases involving late reporting of grass roots lobbying activities. There have been recent cases of late reporting by political committees where similar amounts of money were involved and the penalty was \$5,000 with \$2,500 suspended. Those cases involved non-reporting for several years. For example, the Grays Harbor County Democratic Central Committee failed to timely report \$60,881 in contributions received and \$52,327 in expenditures made for a period of over four years, and paid a penalty of \$5,000 with \$2,500 suspended.

The American Cancer Society's grass roots lobbying activities were reported from 43 to 70 days late. However, the activities occurred, and were required to be reported, during the 2004 legislative session, but were not reported until after the session had ended. Thus, in staff's opinion, the violations are significant. The penalty also reflects the fact that additional late reporting occurred during the course of the investigation and American Cancer Society staff made no effort to contact PDC and make sure their on-going activity was being reported properly. The suspended penalty and its conditions reflect an effort to insure that the violations are not repeated.

Brief Enforcement Hearings – Staff is presenting two cases as Brief Enforcement Hearings on June 9, 2005 as noted below: (Both Respondents are part of the Washington BREATHE Alliance investigation.)

- American Heart Association – Pacific Mountain Affiliate for: 1) failing to timely report in-kind contributions to Breathe Easy Washington, totaling \$3,520, in 2004; and 2) failing to timely report grass roots lobbying expenditures of \$11,245.
- Breathe Easy Washington for failing to timely report the receipt of in-kind contributions totaling \$8,528 during 2004.

Request for Dismissal of Remaining Allegations - Staff is requesting that the Commission dismiss the remaining allegations against the following respondents, for the reasons given:

- The complainant alleged that the Washington BREATHE Alliance failed to report contributions it received in excess of three million dollars from the Robert Wood Johnson Foundation for lobbying activities. The American Cancer Society was the fiscal agent for funds received from the Robert Wood Johnson Foundation. Staff found no evidence that the Foundation's grants for activity in Washington State approached three million dollars, or that the funding that was received from the Foundation was reportable by the Washington BREATHE Alliance or the American Cancer Society.
- The complainant alleged that the Washington BREATHE Alliance failed to report voter opinion surveys as lobbying-related expenses. Staff found no evidence that the poll in question was reportable as a direct or grassroots lobbying expense.
- The complainant alleged that the Washington BREATHE Alliance failed to register and report expenditures made as a political committee. Staff found no evidence that the Washington BREATHE Alliance was a political committee.
- The complainant alleged that the American Lung Association of Washington (ALAW), Washington Pacific Islander Families Against Substance Abuse (WAPIFASA), and the Center for MultiCultural Health (CMCH) failed to timely report grass roots lobbying expenditures conducted through the Washington BREATHE Alliance. Staff found no evidence that the above organizations conducted reportable grass roots lobbying expenditures.
- The complainant alleged that the lobbyists employed by the member organizations of the Washington BREATHE Alliance (as well as other lobbyists not employed by the member organizations) conducted lobbying on behalf of the Washington BREATHE Alliance, but failed to report compensation and expenses incurred on behalf of the Alliance as a separate employer. Staff found no evidence that Michael Ryherd or Susan Tracy were employed by the Washington BREATHE Alliance. Staff found no evidence that Lee Tanuavasa or Brandie Flood (employees, respectively, of WAPIFASA and CMCH) conducted reportable direct lobbying. Staff found no evidence that Nick Federici, Melanie Stewart, or the other registered staff and contract lobbyists of BREATHE member organizations were in fact employed by the Washington BREATHE Alliance itself.
- The complainant alleged that the Washington BREATHE Alliance failed to report in-kind contributions received from the Breathe Easy Washington I-890 campaign and its chairman Kevin Phelps, and that the I-890 campaign similarly failed to report making these contributions. Staff found no evidence that the BREATHE Alliance received any contribution from the Breathe Easy Washington campaign or Mr. Phelps.

- Staff investigated the appearance that the American Lung Association of Washington failed to timely report in-kind contributions made to the I-890 Breathe Easy Washington committee. Staff found that ALAW did not timely report contributions totaling \$2,671 to the Breathe Easy Washington committee during 2004, but that the majority of the contributions were reported only five days late. Staff found no evidence that the failure to timely report the contributions would rise to the level of enforcement.